

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 92-544-W/S - ORDER NO. 92-976 ✓
NOVEMBER 10, 1992

IN RE: Application of Dewees Utility Corporation) ORDER APPROVING
for Exemption from Regulation.) WAIVER AND
) GRANTING EXEMPTION

By Application filed September 25, 1992, Dewees Utility Corporation (Dewees or the Company) seeks approval for exemption from regulation by the Public Service Commission of South Carolina (the Commission) pursuant to 26 S.C. Regs. 103-502.2 and 3 and 103-702.2 and 3 (Supp. 1991). In addition, Dewees seeks a waiver of the requirements that it file copies of a statement signed by each lot owner disclosing that the water and sewerage services in the subdivision are provided by a non-profit homeowners association and a copy of its sewerage operating permit from the South Carolina Department of Health and Environmental Control (DHEC). See, 26 S.C. Regs. 103-502.3 and 702.3.

After a thorough consideration of the Application, the evidence and applicable law, the Commission makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Dewees is a non-profit corporation formed to provide water and sewerage services to the development known as Dewees Island in Charleston County, South Carolina. Dewees asserts it is organized for eleemosynary purposes and, as such, is a membership organization. Membership in the organization is limited to owners of property to be served by the corporation.

2. Dewees Island is being developed as a residential community by Island Preservation Partnership. Thirteen of the 150 lots and dwelling units have been sold; the remaining 137 residential lots are being developed for sale to new lot owners.

3. In its Application and letter of November 2, 1992, Dewees has submitted the following documentation:

- a. A copy of its certificate of incorporation in the State of South Carolina. The certificate of incorporation states that all issues of shares of stock will initially be held by the Dewees Island Homeowners Association;
- b. A copy of its by-laws. The by-laws state that each lot owner is a voting member of the Dewees Utility Corporation.
- c. A copy of the Declaration of Covenants and Restrictions of the Dewees Island Property Owners Association;
- d. A copy of the operating permit issued by DHEC for the Company's water system and a copy of the construction permit issued by DHEC for the Company's sewage system.

- e. Copies of statements signed by all present lot owners disclosing that water and sewer services will be provided by a non-profit corporation owned solely by the homeowners. The Application indicates that the board of directors, elected by the membership composed of the lot owners, will establish an appropriate assessment to meet the operating expenses of the utility which must be paid by each lot owner. See Exhibit G.

CONCLUSIONS OF LAW

1. 26 S.C. Regs. 103-502.2 and 103-702.2 (Supp. 1991) provides that a homeowners association which supplies water and/or sewer service to any portion of the public for compensation is a utility subject to the rules and regulations of the Commission.
2. 26 S.C. Regs. 103-502.2 and 3 and 103-702.2 and .3 provide that a homeowners association which files certain documents and meets certain other requirements may be found not to be a utility subject to the Commission's regulation.
3. Except for the signed statements by each lot owner and an operating permit from DHEC for the sewerage facility, Dewees has complied with the filing requirements of 26 S.C. Regs. 103-502.3 and 702.3. The Commission concludes, however, that based on the documentation submitted, all existing lot owners have signed documents which place them on notice that water and sewer service will be provided by a non-profit corporation owned solely by the homeowners. In addition, the Commission concludes that Dewees does

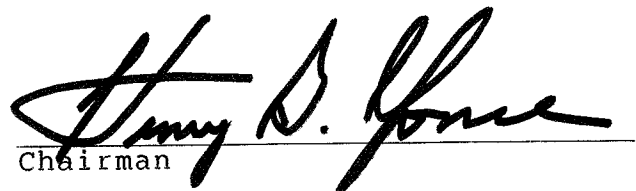
not have an operating permit from DHEC because the sewer treatment plant is under construction. For present purposes, the Commission finds that the lot owner statements and sewerage operating permit required by 26 S.C. Regs. 103-502.3 and 702.3 should be waived. Dewees shall, however, file its DHEC operating permit for its sewerage treatment plant with the Commission when it is so issued.

4. The Commission finds and concludes that Dewees Utility Corporation has substantially complied with the filing and other requirements delineated in 26 S.C. Regs. 103-502.3 and 103-702.3. Consequently, the Commission determines that Dewees Utility Corporation qualifies as a homeowners association exempt from Commission regulation under Section 502.3 and 702.3.


IT IS THEREFORE ORDERED:

1. The water and sewerage service operated by Dewees Utility Corporation shall be exempt from regulation by this Commission.
2. Upon its receipt, Dewees Utility Corporation shall file its DHEC sewerage treatment operating permit with the Commission.
3. That this Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Deputy Executive Director
(SEAL)